



Application/Control Number 09/922,188

Page 1.

Art. Unit: 3764

Filing Date: 8/3/01

Applicant: Richard P. Bagby

Appn. Title: Anatomical Device

Primary Examiner: Michael A. Brown  
Reply to Office Action dated March 18, 2004

Appl. No. 09/922,188 Arguments/ Remarks  
Response to Detailed Action on Page 2 regarding Koch, Dygert and Lau patents.

Claims 1-8 stands rejected under 35 U.S. C. 103 [a] as being unpatentable over Koch in view of Dygert, along with Lau. Also claims 9-10 are objected to as to being dependent upon a rejected claim base. The **Dygert** patent cannot properly be combined with **Koch** patent to form an obvious type rejection for the following reasons; It is important to note that the **DYGERT** Patent 1,222,518 of Apr. 3, 1917 is an **Ovate** shape, which according to **Webster Dictionary, 1913** states; **Ovate** a.[L. *ovatus*, from *ovum* egg.] 1. Shaped like an egg, with the lower extremity broadest. 2.[Bot.] Having the shape of an egg, or of the longitudinal section of an egg, with the broader end basal. As can easily be seen in the Dygert patent [1,222,518 of April 3, 1917], his surgical appliance is not elliptical, but egg-shaped or Ovate. On the other hand a **Merriam-Webster Dictionary** defines an elliptical shape or an ellipse as; 1 b: a closed plane curve generated by a point moving in such a way that the sums of its distances from two fixed points is a constant; a plane section of a right circular cone that is a closed curve. [please continue with definition on page 2.]

Appl.No. 09/922,188 Richard Bagby

constant; a plane section of a right circular cone that is a closed curve. 2: Ellipsis [ellipse illustration] The illustration then pictures a **horizontal ellipse** with letters P, P", F',P' and F and explains; ellipse 1 b: F, F'foci; P, P',P" any point on the curve;  $FP + PF' = FP'' + P''F' = FP' + P'F'$  Looking at the ellipse [**horizontal**] illustrated in the Merriam-Webster Dictionary it is obvious that the ellipse's left and right sides [if evenly divided by a vertical line in the center] are symmetrical and identical. To the contrary, however an **Ovate shape** as illustrated in Figs. I, III, IV, VI, VII and VIII of Dygert patent on its front page are all **egg-shaped**. The narrow or "V" end of the loop [lines 50 – 56] forms the lower portion of the **Ovate Loop**, similar to an egg-shape [if stood vertically on its smaller end]. Ovate leaves likewise are broader at one end and thus are called **egg-shaped** or "**Ovate**" leaves. The Dygert surgical appliance forms an **Ovate** noose made of "fine, soft rubber of perfect flexibility and resiliency" [lines 46-50]. The sheath [C] is slipped upwards to tighten like a noose around the penis as Dygert states,"The object of the sheath is to regulate the pressure exerted upon the organ during erection through control of the size of the opening of the loop." [Lines 29 – 32] Applicants invention [application number 2003/0024536 A1] consists of a **Horizontally Elliptical Shape** made of a plastic that enables maintenance of its **Elliptical shape** with out compromising it, but still sufficiently flexible to make it easy to put on or remove, as shown in Figs. 1-3B

of 15. The two segments of the **Ellipse** are equal and **symmetrical** and the **45-50 degree Horizontal Ellipse** provides a comfortable, but functional cradle of about 25 – 35 degrees [claim 8], which very efficiently, but firmly supports the underside of the penis. When the left and right legs 106 and 108 [Fig.1 & 2] are secured in a locked position, the penis is pushed upwards against the top of frame [102] to **localize pressure on the superficial dorsal vein**. Unlike the sliding or moveable sheath [C] in the Dygert patent, the **clearance below the urethra** always remains constant in its unique “**Open at the bottom**” design of applicant’s **Elliptical Shaped invention**. This insures that there will always be adequate clearance around the urethra. This eliminates the “**tourniquet**” effect often inherent in the adjustable noose designs should the noose be tightened too much and inhibit circulation. Applicant’s invention would be unable to achieve all of its objectives and advantages were its frame merely made of “**fine soft rubber of perfect flexibility and resiliency**.” Its **novel Horizontally Elliptical shape** would be compromised and could not provide adequate clearance around the urethra or exert sufficient **localized pressure against the superficial dorsal veins** located on the topside of the penis. It should be noted that on applicant’s rigid frame embodiments such as Figs. 17 – 31, no locking device is needed on distal ends. The Dygert invention **employs a Vertical axis** of its **egg-shaped configuration**, while, **to the contrary**, applicant’s invention

employs a **Horizontal Ellipse axis** to achieve its desired results. The male penis is more horizontally **Elliptical in shape** than vertically **Ovate in shape**. Applicant's **Elliptical invention** is "Anatomically Correct" so it fits more perfectly and comfortably the natural **Elliptical Contour of the male organ**.

LAU [Kai-Ming] patent #5,749,862 dated May 12, 1998 in Hong Kong.

The LAU patent is a **CONDOM IMPROVING DEVICE** that "relates to a device to supplement the use of a condom to improve its function both as a contraception device and as an aid for the prevention of the transmission of diseases." This is stated in first paragraph under **FIELD OF THE INVENTION**. It is comprised of an elastic sheet [Column 1, lines 38 – 58] with an aperture through which a penis wearing a condom is pushed through the opening which may be "substantially circular or elliptical or polygonal" [Column 2, lines 59 – 61] to "reduce the risks of unwanted pregnancy and to mitigate other contagious sexually transmitted diseases." Nowhere in its 10 claims does the Lau patent claim to be an erection aid by reducing returning venous blood from the penis to improve penile erection performance.

It must "fit sufficiently tight around the rim of the condom to which exerts substantially even pressure even the circumstances of the condom to stop

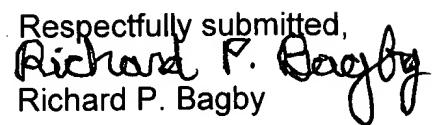
**semen spilling outside the condom and to stop the condom slipping off the male organ accidentally..” [Column 1, lines 38 – 51.]** The Lau device **relates only to improving the use of a condom**, mentioned above on page 2. The combination of **DYGERT’S Ovate rubber loop, LAU’S Condom improving device and KOCH’S SPLIT RING Circular shaped Constricting Ring is submitted to be improper**, as anyone skilled in the art would have no reason to make such a combination. Applicant can see no relation between **LAU’S condom improving device and applicant’s erection aiding device**. **KOCH’S split ring makes no claim to reducing or restricting the superficial dorsal veins located at the top center of the penis**. It can’t exert significant pressure on the superficial dorsal veins at top of organ because it has an opening at its top side **[by design]** as shown on first page and Fig. 3 and Figs. 4 & 5 on second page of drawings. Even when applied to a smaller organ or when tightened as shown in Fig. 2 there is an **upside down “V” notch molded or machined into the top, inside circumference ,which precludes it exerting localized pressure to superficial dorsal veins**. Instead, the **KOCH SPLIT RING exerts pressure at the four lugs [10] and as stated in b. of claim 1, "constricting means operable to contract said ring resiliently about the penis to press said lugs firmly against the penis, whereby said lugs [10] constrict and reduce venial flow of blood in the PORTIONS OF THE PENIS PERIPHERY**

**ENGAGED , BUT NOT IN THE PORTIONS OF SAID PERIPHERY NOT ENGAGED THEREBY.”** The top center of the penis [where superficial dorsal veins are located] is not engaged by design. In the next to last paragraph in the Description the Koch patent 4,203,432 states, "As shown, the aggregate angular extent of lugs [10] is about 50% of the ring circumference." The Koch patent employs the "split ring" and flexibility capability because, "**The flexibility of the ring permits it to accommodate itself readily to the COMMONLY NON-CIRCULAR CROSS SECTIONAL CONTOUR OF THE PENIS."**" [line 1–2 of preceding paragraph] This is precisely why applicant's invention is **Elliptical in shape, instead of circular or ovate; it most closely matches the natural elliptical contour of the penis for maximum comfort and efficiency.** Also the elliptical design so closely matches the natural **elliptical contour of the penis that it can't rotate around the penile shaft.** The next sentence in the description states in Koch patent, "Its rectangular cross sectional shape causes it to present a generally cylindrical surface, defined by lugs [10], to the penis, so as to resist any tendency of the ring strand to roll, or twist around the axis of its peripheral extent." Applicant's invention has much more clearance around the critical area of the urethra [12 of Fig.2 and 3, because its **Opening is at the bottom of the device and loop [154] is far below the bottom surface of the urethra** as illustrated in Fig.4 of Sheet 2 of

15 in applicant's invention. As mentioned before, the **Elliptical Configuration** restricts the superficial veins on top of organ, gaining added support from the under side of the penis because of the greater surface area provided by the Wider ELLIPTICAL SHAPE which is about 17% wider horizontally and about 17% shorter vertically than would be possible with a circular shape. The expansion forces from the erect penis are utilized to push it upwards against the top of the device to exert localized pressure against the superficial dorsal veins and **NOT to reduce venial flow of blood in the portions of the penis PERIPHERY ENGAGED THEREBY** as described in claim 1 b. of Koch patent. The Koch patent [by design] causes constriction only where the 4 lugs [10] press against "the aggregate angular extent of lugs 10 is about 50% of ring circumference." The **novel ELLIPTICAL device** is much easier to apply or remove, because it's wider horizontally than a ring embodiment. Applicant used the Koch patent as a reference in his patent so as to contrast the differences between a merely circular ring with an opening [9 Fig.3] at its top portion and a **Horizontally Elliptical device with its opening 180 degrees opposite the topside.** Customer acceptance indicates that this feature [open on underside] alone has been a proven advantage. Thank you for your dedication to being thorough and pointing out clarifications applicant needed to address. In view of the above, it is submitted that the claims now in this application are in condition

Page 8.

for allowance. Accordingly, reconsideration and allowances of claims 1-10 is requested.

Respectfully submitted,  
  
Richard P. Bagby

Box 1508

Templeton, CA 93465

Fax: 805 226-8418

Appl. No. 09/922,188 Richard Bagby